

§ 404.354

the benefit payable on the record with the highest primary insurance amount. If your benefit before any reduction would be larger on an earnings record with a lower primary insurance amount and no other person entitled to benefits on any earnings record would receive a smaller benefit as a result of your receiving benefits on the record with the lower primary insurance amount, you will receive benefits on that record. See § 404.407(d) for a further explanation. If you are entitled to a child's benefit and to other dependent's or survivor's benefits, you can receive only the highest of the benefits.

[44 FR 34481, June 15, 1979; 44 FR 56691, Oct. 2, 1979, as amended at 48 FR 21928, May 16, 1983; 51 FR 12606, Apr. 14, 1986; 61 FR 38363, July 24, 1996]

§ 404.354 Your relationship to the insured.

(a) *General.* You may be related to the insured person in one of several ways and be entitled to benefits as his or her child—as a natural child, legally adopted child, stepchild, grandchild, stepgrandchild, or equitably adopted child.

(b) *Use of State laws.* To decide your relationship to the insured, we look to the laws that are in effect in the State where the insured has his or her permanent home when you apply for benefits. If the insured is deceased, we look to the laws that were in effect at the time the insured worker died in the State where the insured had his or her permanent home. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, we will look at the laws of the District of Columbia. For a definition of permanent home, see § 404.303. The State laws we use are the ones the courts would use to decide whether you could inherit a child's share of the insured's personal property if he or she were to die without leaving a will. If these laws would not permit you to inherit the insured's personal property as his or her child, you may still be eligible for child's benefits if you are related to the insured in one

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of the other ways described in §§ 404.355 through 404.359.

[44 FR 34481, June 15, 1979, as amended at 49 FR 21513, May 22, 1984]

§ 404.355 Who is the insured's natural child.

You may be eligible for benefits as the insured's natural child if one of the following conditions is met:

(a) You could inherit the insured's personal property as his or her natural child under State inheritance laws as described in § 404.354.

(b) You are the insured's natural child, and the insured and your mother or father went through a ceremony which would have resulted in a valid marriage between them except for a *legal impediment* described in § 404.346(a).

(c) You are the insured's natural child and your mother or father has not married the insured, but the insured has either acknowledged in writing that you are his or her child, been decreed by a court to be your father or mother, or been ordered by a court to contribute to your support because you are his or her child. In the case where the insured is deceased, the acknowledgement, court decree, or court order must have been made before his or her death. For purposes of determining whether the conditions of entitlement are met throughout the first month as stated in § 404.352(a), the written acknowledgement, court decree, or court order will be considered to have occurred on the first day of the month in which it actually occurred.

(d) Your mother or father has not married the insured but you have evidence other than the evidence described in paragraph (c) of this section to show that the insured is your natural father or mother. Additionally, you must have evidence to show that the insured was either living with you or contributing to your support at the time you applied for benefits. See § 404.366 for an explanation of the terms *living with* and *contributing to your support*. If the insured is not alive at the time of your application you must have evidence to show that the insured was